

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE MUSEUM OF MODERN ART,

Plaintiff,

v.

MOMACHA IP LLC and MOMACHA OP LLC,

Defendants.

Case No. 1:18-cv-03364-LLS

**DECLARATION OF JAMIE A.  
LEVITT IN SUPPORT OF  
PLAINTIFF THE MUSEUM OF  
MODERN ART'S MOTION FOR  
PRELIMINARY INJUNCTION**

I, JAMIE A. LEVITT, under penalty of perjury and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney with the law firm of Morrison & Foerster LLP, counsel for Plaintiff The Museum of Modern Art ("MoMA"). I am duly licensed to practice in the courts of the State of New York. This declaration is based on my personal knowledge, unless otherwise stated, and if called as a witness I could and would testify competently to the facts stated herein.

2. I submit this declaration in support of The Museum of Modern Art's Motion for Preliminary Injunction.

3. MoMA owns U.S. Registration No. 2,768,707 for MOMA for "Multimedia software recorded on CD-ROM in the field of music and art" in International Class 9, based upon use in commerce since at least as early as October 1998; "Jewelry and clocks" in International Class 14, based upon use in commerce since at least as early as June 1989; "Blank books, phone books, address books, date books, journal notepads, books about art, architecture and design, posters and prints, note cards, stationery, drawing rules, pencils and pens" in International Class 16, based upon use in commerce since at least as early as December 1999;

“Umbrellas, book bags, backpacks, and tote bags” in International Class 18, based upon use in commerce since at least as early as December 1975; “Household and kitchen utensils, namely, plates, cups, vases, trays, bowls, barware, household and kitchen containers for food, beverage glassware and mugs” in International Class 21, based upon use in commerce since at least as early as July 2000; “Clothing, namely t-shirts, caps, and scarves” in International Class 25, based upon use in commerce since at least as early as August 1996; “Jigsaw puzzles, and board games” in International Class 28, based upon use in commerce since at least as early as 1996; “Retail and wholesale store services, mail order catalog services and online catalog services featuring artwork reproductions, stationery, books, publications, desk accessories, house wares, household goods, umbrellas, gifts, toys, CD’s, travel accessories, clothing and other general merchandise” in International Class 35, based upon use in commerce since at least as early as 1967; and “Museum services, educational services, namely conducting exhibitions, workshops, seminars, lectures, tours, film and video presentations, libraries and study centers in the field of art culture and design, providing information in the field of art, culture and design over the internet, and publication of educational material in the field of art, culture and design” in International Class 41, based upon use in commerce since at least as early as 1967. MoMA filed the application that resulted in U.S. trademark Registration No. 2,768,707 on August 20, 2001. The registration issued on September 30, 2003. MoMA filed an affidavit under Section 15 of the Lanham Act on September 29, 2009. Thus, this registration is incontestable. Attached hereto as **Exhibit A** is a true and correct copy of the registration certificate for U.S. Registration No. 2,768,707.

4. MoMA owns U.S. Registration No. 1,623,051 for MOMA DESIGN STORE for “Retail store services in the field of artwork, stationery, books, housewares, gifts and toys and other general merchandise” in International Class 42. MoMA filed the application that resulted

in Registration No. 1,623,051 on November 22, 1989, alleging use in interstate commerce since at least as early as November 14, 1989. The registration issued on November 13, 1990. MoMA filed an affidavit under Section 15 of the Lanham Act on May 17, 1996. Thus, this registration is incontestable. Attached hereto as **Exhibit B** is a true and correct copy of the registration certificate for U.S. Registration No. 1,623,051.

5. MoMA owns U.S. Registration No. 2,594,260 for MOMAQNS for “Museum services; libraries with study centers” in International Class 41. MoMA filed the application that resulted in Registration No. 2,594,260 on July 30, 2001, alleging use in interstate commerce since at least as early as January 2001. The registration issued on March 7, 2008. MoMA filed an affidavit under Section 15 of the Lanham Act on May 17, 1996. Thus, this registration is incontestable. Attached hereto as **Exhibit C** is a true and correct copy of the registration certificate for U.S. Registration No. 2,594,260.

6. MoMA owns U.S. Registration No. 4,384,153 for MOMA MODERN KIDS for “Books related to art; sketch pads” in International Class 16 and “Dolls, jigsaw puzzles and art supply kits in the nature of hobby craft sets for building and designing miniature rooms and buildings” in International Class 28. MoMA filed the application that resulted in Registration No. 4,384,153 on May 29, 2009, and later filed a statement of use alleging use in interstate commerce since at least as early as April 30, 2010. The registration issued on August 13, 2013. Attached hereto as **Exhibit D** is a true and correct copy of the registration certificate for U.S. Registration No. 4,384,153.

7. MoMA owns U.S. Registration No. 4,083,420 for MOMA PS1 for “Entertainment in the nature of art, music and architecture; entertainment in the nature of art exhibitions; entertainment in the nature of architectural exhibitions; entertainment in the nature

of DJs and live music performances; entertainment in the nature of competitions for architects” in International Class 41. MoMA filed the application that resulted in Registration No. 4,083,420 on May 27, 2011, alleging use in interstate commerce since at least as early as May 20, 2010. The registration issued on January 10, 2012. MoMA filed an affidavit under Section 15 of the Lanham Act on July 11, 2017. Thus, this registration is incontestable. Attached hereto as **Exhibit E** is a true and correct copy of the registration certificate for U.S. Registration No. 4,083,420.

8. MoMA has filed U.S. Application Serial No. 87/373,083 for the ART MAKING WITH MOMA mark for “Paints for arts and crafts” in International Class 2; “Arts and crafts paint kits; arts and craft clay kits; children’s arts and crafts paper kits; journals, namely blank journals and personalized writing journals; notebooks; calendars; paper; children’s activity books; modeling clay; molds for modeling clays; paint brushes; canvas for painting; markers; pencils; crayons; writing instruments; impression stamps; stickers; stencils; modeling compounds; hobby craft kits, namely, arts and crafts kits composed primarily of canvas for painting, paintbrushes, paper, stickers, and stencils, canvas fabric, and paint” in International Class 16; “Hobby craft kits, namely, arts and crafts kits for making household decorations” in International Class 20; and “Puzzles; board games; construction toys” in International Class 28, which was filed on March 16, 2017. The opposition period for Application Serial No. 87/373,083 ended on April 5, 2018. Attached here to as **Exhibit F** is a true and correct copy of a current print-out of the Trademark Status & Document Retrieval (“TSDR”) page for U.S. Application Serial No. 87/373,083.

9. Defendant MoMaCha IP LLC filed U.S. Application Serial No. 87/689,255 to register MOMACHA for “Beverages; namely, teas, tea blends and coffee; tea and coffee based

beverages” in International Class 30 and “Restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services; carry out restaurant services” in International Class 43 on an intent-to-use basis. The application was filed on November 17, 2017. Attached hereto as **Exhibit G** is a true and correct copy of a current print-out of the TSDR page for U.S. Application Serial No. 87/689,255.

10. Defendant MoMaCha IP LLC filed U. S. Application Serial No. 87/758,842 to register MOMA for “Beverages; namely, teas, tea blends and coffee; tea and coffee based beverages” in International Class 30 and “Restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services; carry out restaurant services” in International Class 43 on an intent-to-use basis. Attached hereto as **Exhibit H** is a true and correct copy of a current print-out of the TSDR page for U.S. Application Serial No. 87/758,842.

11. Attached hereto as **Exhibit I** is a true and correct copy of an article called “Tea if by sea, cha if by land: Why the world has only two words for tea,” dated January 11, 2018.

12. Attached hereto as **Exhibit J** is a true and correct copy of an Instagram post from MoMaCha customers.

13. Attached hereto as **Exhibit K** is a true and correct copy of an Instagram post from a MoMaCha customer.

14. Attached hereto as **Exhibit L** is a true and correct copy of an Instagram post from a MoMaCha customer.

15. Attached hereto as **Exhibit M** is a true and correct copy of an email I received on March 26, 2018.

16. Attached hereto as **Exhibit N** are true and correct copies of excerpts of the webpage and social media posts from the designer hired by Defendants to design the MOMACHA logo.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on April 20, 2018, in New York, New York.

By: /s/ Jamie A. Levitt  
JAMIE A. LEVITT